

# Divorces: further research

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## 1. Why use this guide?

This guide will help you find the different types of records The National Archives holds on divorce and separations. It covers:

- modern day divorce (after 1858)
- divorces pre-1858

You may find it useful to read the **research signpost on divorce** if you have not already done so.

## 2. Essential information

In 1858 divorce law was introduced in England but divorce remained too expensive for most people until the 1920s.

For legal proof of a divorce in any court in England and Wales since 1858, contact the **Principal Registry of the Family Division**.

The National Archives holds case files for all divorces from the Supreme Court 1858-1937 - **very few case files survive after 1937**. No case files survive from the district registries set up in 1927.

## 3. Case files for divorces after 1858

Each divorce suit created a case file.

Case files contain:

- the original petition and response
- relevant marriage and birth certificates
- a record of the court process
- copies of decrees (from about 1870 onwards)

- evidence (infrequently)

Most files were stripped of the less formal papers, but some full files were kept as examples of how the court operated. These are described as 'full files' in Discovery, **our catalogue**.

Case files are now destroyed 20 years after the divorce. Within this 20 year period, you can apply to the relevant court for permission to see the file. You can search surviving case files from 1858 onwards by name in **J 77**. The original indexes are in **J 78**. You can search and download **divorce case files from 1858 to 1911** at Ancestry.co.uk (`{xpoundx[2]}`).

The only record of those cases where the case file has not survived would be the decree held by the court, contact the **Principal Registry of the Family Division**.

### 3.1 Investigations into collusive divorces

In cases of suspected collusion or deceit, decrees could be overturned.

Registers of divorce cases investigated by the King's or Queen's Proctor, from 1875, are in **TS 29**. They are closed for up to 75 years.

## 4. Divorce records before 1858

Before 1858 divorce in the modern sense, that both partners were free to re-marry, was rare. People instead found other ways to separate - through custom, the church courts, the common law courts and Parliament.

See the table below for details of which records are held by The National Archives and which are at **local archives**.

Method of separation	Where records are held
Private separation	The National Archives (see section 5)
Desertion and elopement	Quarter session papers in local archives
Wife sale	Quarter session papers and newspapers in local archives
Declaration of nullity, annulment or divorce a mensa et thoro by church courts	The National Archives and local archives (see section 6)
Full divorce by Act of Parliament	Parliamentary Archives (The National Archives holds a few examples)

## 5. Deed of separation

A deed of separation would be drawn up between the husband and a trustee of the wife, not the wife herself, and provision made for the wife and children.

If you know the names of both parties, you might find a deed of separation in the Close Rolls in **C 54**.

You may find records of the deed and correspondence amongst family or estate records. Search the **National Register of Archives** to see where different collections are held.

Deeds of separation were used even after the Matrimonial Causes Act of 1857, as couples were still **unable** to end a marriage:

- because of incompatibility
- if adultery could not be proven
- if religious scruples prevented them from divorcing

## 6. Separations granted via church courts

### 6.1 Divorce a mensa et thoro

A divorce a mensa et thoro was a legal separation, granted on the grounds of adultery and/or life-threatening cruelty.

You may find a record of these in the Close Rolls in **C 54** or decree rolls of Chancery in **C 78**. In C 78 you may also find:

- disputes over property rights and settlements made at the time of separation
- church orders directing payment of money as maintenance (these could be enrolled up to six months after being made)

You can find some separation settlements in **PC 2** indicating that the Privy Council had an interest in ensuring they were adhered to.

### 6.2 Appeals

First appeals could be heard at the Archbishop's Court at Canterbury or York. Further appeals were to the High Court of Delegates up to 1834, and the judicial committee of the Privy Council between 1834 and 1858.

On appeal, the case would be suspended in the lower court, and transcripts of all the records transferred upwards. The table below shows where you can find records for each court.

Appeal court	Where to find records
Province of Canterbury's Court of Arches	<b>Lambeth Palace Library</b>
Consistory Court of York	<b>Borthwick Institute of Historical Research</b>
High Court of Delegates	The National Archives in <b>DEL 1, DEL 2, DEL 7</b>
Judicial committee of the Privy Council	The National Archives in <b>PCAP 1</b> and <b>PCAP 3</b>

**DEL 2** is the main series of cause papers, which include allegations and petitions. The papers are arranged by case and term, and consist of bundles of papers relating to each particular case. Details can include:

- the authorisation of the judges
- a formal statement of the terms of the appeal (usually based on faults in the previous legal proceedings, rather than on the intrinsic justice of the case)
- a note of any appearance by the parties and their statement
- the warrants or motions for hearing
- a copy of the citation

The early papers are often in **Latin**. Most of the material is in a standard legal form, but there are sometimes personal details about the parties.

The accounts of proceedings can sometimes be very long. The case books in **DEL 7** (1796-1834) and **PCAP 3** (1834 onwards) contain bound volumes of printed proceedings and sometimes manuscript records of the judgement given.

### 6.3 Declaration of nullity

The church (consistory) courts of the bishops could grant a declaration of nullity, meaning the marriage was considered invalid from the start. The children became illegitimate and the wife lost

her right to inherit from her husband.

You can find consistory courts records in **local archives**.

## 6.4 Annulment

An annulment was a form of legal separation which protected the wife's rights and kept the children legitimate, but neither party could remarry unless the other died. The husband or wife could subsequently apply to the church court for a declaration of nullity.

## 6.4 Criminal conversation

The husband of an adulterous wife could take out a civil suit of criminal conversation in the Court of King's Bench or Common Pleas to claim damages from his wife's lover.

In 1809 the House of Lords ordered that the transcript of a preliminary trial for criminal conversation should accompany every divorce bill brought before it.

You may find reports of sensational trials in newspapers from the late 18th century. **The Times** covered many in some detail.

## 7. Full divorce by Act of Parliament

In order to remarry, a full divorce by Act of Parliament was required. Before 1858 less than 300 full divorces were granted. Only four of the petitioners were women and they had to prove life-threatening cruelty by their husband.

You can find divorce acts in the **Parliamentary Archives**. Only a few examples exist in The National Archives in **C 89** and **C 204**.

**C 89/15/20**-21 contains the first true parliamentary divorce in 1670, between John Manners, Lord Roos, and Lady Anne Pierpont. This created a precedent for parliamentary divorces on the grounds of the wife's adultery.

## 8. Further reading

The following publications are available in **The National Archives' library**. Some or all of the publications below may be available to buy from The National Archives' **bookshop**:

Amanda Bevan, *Tracing your ancestors in The National Archives* (7th edn, Kew, 2006)

Roderick Philips, 'Divorced, beheaded, died...', *History Today* XLIII (1993), 9-12

Griselda Rowntree and Norman H Carrier, 'The resort to divorce in England and Wales, 1858-1957', *Population Studies* XI (3) (1958) 188-233

Lawrence Stone, *Road to divorce: England 1530-1987* (Oxford, 1990), 383-416

Guide reference: *Legal Records Information 43*

Downloaded from:

<http://www.nationalarchives.gov.uk/records/research-guides/divorce-further-research.htm>